

1 Jennifer Haltom Doan
2 (admitted *pro hac vice*)
3 Joshua R. Thane
4 (admitted *pro hac vice*)
5 J. Randy Roeser
6 (admitted *pro hac vice*)
7 HALTOM & DOAN
8 6500 Summerhill Road, Suite 100
9 Texarkana, TX 75503
10 Telephone: (903) 255-1000
11 Facsimile: (903) 255-0800
12 Email: jdoan@haltomdoan.com
13 Email: jthane@haltomdoan.com
14 Email: rroeser@haltomdoan.com

10 William A. Hector (SBN 298490)
WAHector@venable.com
11 VENABLE LLP
12 101 California Street, Suite 3800
San Francisco, CA 94111
13 Telephone: (415) 653-3750
Facsimile: (415) 653-3755

**ATTORNEYS FOR INTERVENOR-PLAINTIFFS
OATH HOLDINGS INC. AND OATH, INC.
(d/b/a VERIZON MEDIA)**

19 DROPLETS, INC.,
20 Plaintiff,

21 v.
22 YAHOO!, INC.,
23 Defendant.

**OATH, INC. AND OATH HOLDINGS INC.
(d/b/a VERIZON MEDIA)**

27 DROPLETS, INC.,
28 Intervenor-Defendant.

Case No. C 12-03733-JST (KAW)

**REDACTED VERSION OF DOCUMENT
SOUGHT TO BE SEALED**

**VERIZON MEDIA'S MOTION FOR
SUMMARY JUDGMENT BASED ON
LICENSE AGREEMENT**

ORAL ARGUMENT REQUESTED

HEARING:

Date: June 24, 2020
Time: 2 p.m.
Place: Courtroom 6 – 2nd Floor
Judge: Hon. Jon S. Tigar

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on June 24, 2020, at 2 p.m., or on another date determined by the Court, in Courtroom 6 – 2nd Floor, located in the United States Courthouse, 1301 Clay Street, Oakland, CA 94612, Intervenor-Plaintiffs Oath Holdings Inc. and Oath, Inc. (d/b/a Verizon Media) (together, “Verizon Media”) will and do move the Court for an order granting summary judgment of non-infringement.

As set forth in the attached Memorandum and Points of Authorities, summary judgment in favor of Verizon Media is appropriate because the Patent License Agreement between RPX Corporation and Plaintiff Droplets, Inc. provides Verizon Media, an Affiliate of Verizon Patent and Licensing Inc., the Accused Products and Covered Third Parties a license to practice U.S. Patent No. 6,687,745, the only patent-in-suit. Because Verizon Media, the Accused Products and Covered Third Parties are licensed under the Agreement, this action should be dismissed.

The Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the pleadings, papers, and entire record, oral argument in this matter, and upon such other matters as may be presented to the Court at or before the hearing on this Motion.

DATED: May 13, 2020

Respectfully submitted,

/s/ William A. Hector
William A. Hector

Attorneys for Intervenor-Plaintiffs Oath Holdings Inc. and Oath, Inc. (d/b/a Verizon Media)

TABLE OF CONTENTS

2	MEMORANDUM OF POINTS AND AUTHORITIES.....	1
4	I. STATEMENT OF ISSUES TO BE DECIDED	2
5	II. STATEMENT OF RELEVANT FACTS.....	2
6	A. Verizon Patent and Licensing Inc. is an RPX Member.....	2
7	B. Verizon Communications Inc. is a Verizon Affiliate	3
8	C. Verizon Media is a Verizon Affiliate.....	4
9	D. The Accused Products' "Licensed Products and Services" 10 Status	7
11	E. The Accused Products are Owned and Operated by Verizon 12 Media.....	9
13	F. Yahoo n/k/a Altaba's "Covered Third Part[y]" Status	11
14	G. Droplets' Agreement Not to Sue	12
15	III. ARGUMENT.....	13
16	A. Verizon Media is Licensed under the Agreement.....	14
17	B. The Accused Products are Licensed under the Agreement	16
18	C. Yahoo n/k/a Altaba is a Covered Third Party under the 19 Agreement.....	18
20	D. Droplets is Required to Dismiss the Case	19
21	E. Droplets' Attempt to Create a Factual Dispute Through 22 Discovery.....	21
23	IV. CONCLUSION	22

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Cerritos Valley Bank v. Stirling,</i> 81 Cal. App. 4th 1108, 97 Cal. Rptr. 2d 432 (2000).....	22
<i>Digitech Image Techs. LLC v. LG Elecs., Inc.,</i> CV 15-34-SLR, 2015 WL 6697263 (D. Del. Nov. 3, 2015).....	21
<i>Fortec Constructors v. U.S.,</i> 760 F.2d 1288 (Fed. Cir. 1985).....	17
<i>Funai Elec. Co. v. Daewoo Elecs. Corp.,</i> No. C-04-01830 JCS, 2008 WL 8969091 (N.D. Cal. July 22, 2008).....	9
<i>FutureVision.com, LLC v. Cequel Communications, LLC,</i> CV 13-855-GMS-MPT, 2016 WL 373790 (D. Del. Feb. 1, 2016).....	15, 18, 19
<i>Integrated Global Concepts, Inc. v. j2 Global, Inc.,</i> Civ. No. C-12-03434-RMW, 2014 WL 1230910 (N.D. Cal. Mar. 21, 2014).....	14
<i>McCoy v. Mitsubishi Cutlery, Inc.,</i> 67 F.3d 917 (Fed. Cir. 1995).....	13
<i>Powerine Oil Co., Inc. v. Superior Court,</i> 37 Cal. 4th 377 (2005)	14
<i>Ray v. Alad Corp.,</i> 19 Cal. 3d 22, 560 P.2d 3 (1977)	9
<i>Seoul Laser Dieboard Sys. Co. v. Computerized Cutters, Inc.,</i> No. 15-CV-1212-H-DHB, 2015 WL 12081336 (S.D. Cal. Dec. 22, 2015).....	13
<i>U.S. v. Johnson Controls, Inc.,</i> 713 F.2d 1541 (Fed. Cir. 1983).....	17
<i>United States v. King Features Entm't, Inc.,</i> 843 F.2d 394 (9th Cir. 1988)	13
<i>Wolf v. Superior Court,</i> 114 Cal. App. 4th 1343 (2004)	14
<i>Wolf v. Walt Disney Pictures & Television,</i> 162 Cal. App. 4th 1107 (2008)	22
STATUTES	
Cal. Civ. Code § 1641	16, 17, 19
Cal. Civ. Proc. Code § 1856(a);.....	22

1	RULES	
2	Fed. R. Civ. P. 56(a)	13
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

As Affiliates of Verizon Patent and Licensing Inc. (“Verizon Patent and Licensing”), and RPX Member, Intervenor-Plaintiffs Oath Holdings Inc. and Oath, Inc. (d/b/a Verizon Media) (together, “Verizon Media”) have a license to practice U.S. Patent No. 6,687,745 (the “‘745 Patent”—the only remaining patent-in-suit. This license is the result of the Patent License Agreement (“Agreement”) between Plaintiff Droplets, Inc. (“Droplets”) and RPX Corporation (“RPX”)¹, dated December 18, 2012. *See* Roeser Decl. ¶2, Ex. 1 [Agreement] at 2-5; 7-9 at § 1.2. Droplets and its CEO, David Berberian, Jr., negotiated and agreed to the terms of the Agreement,

[REDACTED]

[REDACTED]

[REDACTED]

In exchange for that substantial sum, Droplets agreed to a broad license that covers and
grandfathers in the alleged infringement of which Droplets now complains. Under the terms of
the Agreement, [REDACTED]

[REDACTED] Agreement at [REDACTED]
[REDACTED]. Moreover, the Agreement requires [REDACTED]

¹ RPX is a patent aggregator, an entity that licenses patents from patentees and then sublicenses those patents.

² Accused Products include all of the products accused of infringement in Droplets' Third Amended Infringement Contentions, and is defined as: mail.yahoo.com; my.yahoo.com; www.yahoo.com; calendar.yahoo.com; finance.yahoo.com; maps.yahoo.com; search.yahoo.com; and Yahoo Toolbar.

1 [REDACTED]
 2 [REDACTED] Agreement at [REDACTED] Droplets
 3 cannot avoid the plain reading of the terms it negotiated or the breadth of the license it granted in
 4 order to gain a windfall—a bonus payment for alleged infringement for which it has already been
 5 compensated by RPX. The broad terms of the Agreement are not new to Droplets. And this
 6 lawsuit must be dismissed because of the unambiguous terms Droplets itself negotiated.
 7

8 Because these issues can be resolved merely by construing the Agreement³—a matter of
 9 law—there is no issue of material fact to preclude the Court from granting summary judgment of
 10 non-infringement based upon the Agreement.

11 **I. STATEMENT OF ISSUES TO BE DECIDED**

- 12 1. Whether Verizon Media is licensed to practice the '745 Patent under the terms of the
 13 Agreement?
- 14 2. Whether the Accused Products are licensed to practice the '745 Patent under the terms
 15 of the Agreement?
- 16 3. Whether Yahoo n/k/a Altaba is a Covered Third Party under the Agreement?
- 17 4. Whether Droplets is improperly maintaining this lawsuit by suing or threatening to sue
 18 any RPX Affiliate, any RPX Member, any RPX Licensee, any RPX Licensee Affiliate
 or any Covered Third Party?

19 **II. STATEMENT OF RELEVANT FACTS**

20 **A. Verizon Patent and Licensing Inc. is an RPX Member**

21 On December 18, 2012, RPX and Droplets entered into the Agreement wherein, [REDACTED]

22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED] Agreement at [REDACTED]
 25 [REDACTED]
 26 [REDACTED]

27
 28 ³ See Dkt. No. 411 at p.3 (“This is an issue of contract interpretation...”).

1 [REDACTED]⁴. Agreement at [REDACTED]; Agreement, [REDACTED]; Agreement, [REDACTED] Droplets
2 acknowledges this fact. *See* Dkt. No. 332 at 6 [REDACTED]
3 [REDACTED]. The Agreement [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 Agreement at [REDACTED]; Dkt. Nos. 228, 229, 233, 234, and 236. As such, it is beyond dispute that
8 Verizon Patent and Licensing has a license to the '745 Patent.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 **B. Verizon Communications Inc. is a Verizon Affiliate**

18 Further, the Agreement [REDACTED]
19 [REDACTED] With respect to Verizon, [REDACTED]
20 [REDACTED]. Agreement at [REDACTED]. Per the Agreement, [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24

25 ⁴ A copy of Verizon Patent and Licensing's RPX Membership and License Agreement is
26 attached. *See* Roeser Decl. ¶3, Ex. 2 [Verizon/RPX Membership Agreement]; Roeser Decl. ¶¶4-
27 10, Exs. 3-9 [Verizon/RPX Membership Amendments]. [REDACTED]
28 [REDACTED]

1 [REDACTED]
 2 [REDACTED]⁵. Verizon Communications Inc. (“Verizon Communications”) [REDACTED]
 3 [REDACTED] See Roeser Decl. ¶¶11-12, Exs. 10-11 [REDACTED]
 4 [REDACTED]. As such, Verizon Communications has a license to practice the ’745
 5 Patent.
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]

15 C. Verizon Media is a Verizon Affiliate

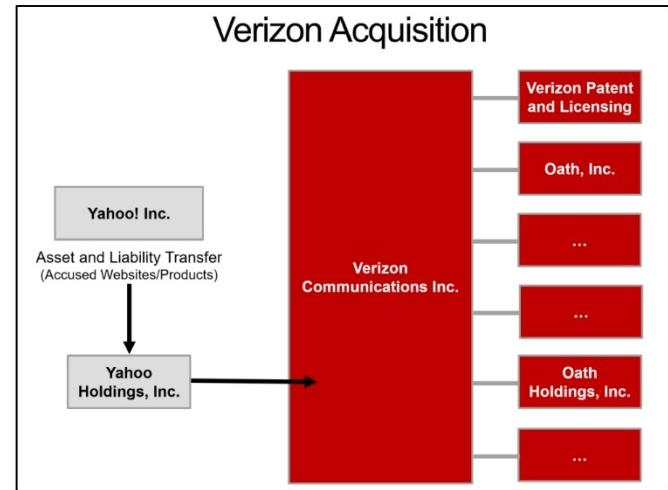
16 On June 13, 2017, Yahoo sold its entire operating business, including all assets and
 17 liabilities for patent infringement, to Verizon Communications—an acquisition years in the
 18 making and unrelated to Droplets or this lawsuit. *See* Gupta Decl. at ¶5; Parry Decl. at ¶5. All of
 19 Yahoo’s products and services (including the Accused Products) were transferred to Verizon
 20 Communications as part of the sale. *See* Gupta Decl. at ¶5; Parry Decl. at ¶5.

21 Following the sale, Yahoo! Inc. renamed itself to Altaba Inc. (“Altaba”) and registered
 22 itself as an investment fund under the Investment Company Act of 1940. Parry Decl. at ¶6; Roeser
 23 Decl. ¶13, Ex. 12 [Altaba Inc. Investor Webpage]. Altaba does not own or control any of the assets
 24 or liabilities for patent infringement of the Accused Products. *See* Gupta Decl. at ¶6; Parry Decl.
 25 at ¶7.
 26

27
 28 ⁵ Emphasis added throughout unless otherwise noted.

At the time Verizon Communications acquired Yahoo's entire operating business, 18 patent infringement cases were pending and/or threatened against Yahoo. *See Roeser Decl.*, ¶24, Ex. 23 [Disclosure Schedules to Stock Purchase Agreement] at Schedule 2.16(c). When it acquired Yahoo's assets, Verizon Communications also assumed all of the liabilities associated with those 18 pending and/or threatened patent infringement cases against Yahoo, as well as any future cases. No such assets or liabilities remained with Yahoo n/k/a Altaba. *Gupta Decl.* at ¶5.

While Verizon Communications' acquisition of Yahoo's entire operating business involved a complicated set of transactions (as do all multi-billion dollar acquisitions), one fact is simple—the Accused Products are now undeniably owned and operated by a licensee to the '745 Patent. *Gupta Decl.* at ¶6. Specifically, in a series of transactions that were part of the Verizon Communications acquisition, Yahoo transferred its operating assets, as well as all liabilities relevant to the subject matter of this case and all then-pending patent infringement cases, to a subsidiary named Yahoo Holdings, Inc. and transferred Yahoo Holdings, Inc. to Verizon



Communications. *See Roeser Decl.* ¶14, Ex. 13 [Reorganization Agreement by and between Yahoo! Inc. and Yahoo Holdings, Inc.] at Sections 1.1 & 1.3. [REDACTED]

[REDACTED] On January 1, 2018, Yahoo Holdings, Inc. changed its name to Oath Holdings Inc., but remained a wholly-owned subsidiary of Verizon Communications. *See Roeser Decl.* ¶16, Ex. 15 [State of Delaware Certificate of Amendment of

1 Certificate of Incorporation of Yahoo Holdings, Inc.]; Ex. 16 [Stock Purchase Agreement by and
2 among Yahoo! Inc. and Verizon Communications Inc.].

3 Importantly, Oath Holdings Inc. and Oath, Inc. (together, “Verizon Media”—the owners
4 of all operating assets and liabilities related to the Accused Products—[REDACTED]

5 [REDACTED] *See Roeser Decl.* ¶12, Ex. 11 [REDACTED]
6 [REDACTED]. As such, Verizon Media (Oath Holdings Inc. and Oath, Inc.) have a
7 license to the ’745 Patent. *See Agreement at* [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 Agreement at [REDACTED]. It is beyond dispute that Verizon Media (the business name for
23 Oath Holdings Inc. and Oath, Inc.)—and the current owner of the Accused Products and all
24 relevant liabilities related thereto—is under common ownership with Verizon Patent and
25 Licensing, [REDACTED]. Under the Agreement, [REDACTED]

26 [REDACTED]
27 [REDACTED] Agreement at [REDACTED]. As
28 [REDACTED]

1 such, Droplets is required to dismiss any and all claims it has against Verizon Media relating to
2 alleged infringement of the '745 Patent— [REDACTED]
3 [REDACTED]
4 Agreement at [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 [REDACTED] *See Roeser Decl. ¶18, Ex. 17* [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] In fact, when specifically questioned as to whether the Verizon/RPX
13 Membership Agreement [REDACTED]
14 [REDACTED] *See Roeser Decl. ¶19, Ex. 18* [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 **D. The Accused Products' "Licensed Products and Services" Status**

18 In addition to granting licenses to [REDACTED]
19 [REDACTED] are also licensed under the terms of the Agreement. Droplets
20 signed. [REDACTED]
21 [REDACTED] Agreement at [REDACTED]. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1

2

3

4

5

6

7

In the Second Amended Complaint [Dkt. No. 23], Droplets specifically accuses Yahoo n/k/a Altaba of infringing the '745 Patent, the only remaining patent-in-suit, by:

10

11

12

13

14

15

16

making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web applications and software including, but not limited to, those maintained on servers located in and/or accessible from the United States under the control of Yahoo that transmit and display information and that are made available to users through web pages, including, without limitation, web applications and software (such as www.yahoo.com, http://mail.yahoo.com, http://maps.yahoo.com, and/or other web applications and software); and/or (ii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

17

18

19

20

21

22

23

24

25

26

27

28

Dkt. No. 23 at ¶30. Droplets' Third Amended Infringement Contentions⁶ allege the following products infringe the '745 Patent: mail.yahoo.com; my.yahoo.com; www.yahoo.com; calendar.yahoo.com; finance.yahoo.com; maps.yahoo.com; search.yahoo.com; and Yahoo Toolbar (collectively, "Accused Products"). *See* Gupta Decl. at ¶4; Parry Decl. at ¶4. Based on Droplets' own pleadings, the Accused Products, by virtue of their alleged infringement of the '745 Patent, [REDACTED] *See* Agreement at 4.

⁶ On May 6, 2020, the Court granted Defendants' motions to strike the Third Amended Infringement Contentions, with leave to amend to identify the alleged "interactive link" and to specify its doctrine of equivalents theory. *See* Dkt. No. 469.

1 **E. The Accused Products are Owned and Operated by Verizon Media**

2 The Accused Products, which are [REDACTED] are owned and operated
 3 by Verizon Media. *See* Gupta Decl. at ¶6. [REDACTED]
 4 [REDACTED]

5 Specifically, in a \$4.4B sale, Yahoo n/k/a Altaba transferred its entire operating business,
 6 including all assets and liabilities relevant to this case to a subsidiary named Yahoo Holdings, Inc.
 7 and then transferred Yahoo Holdings, Inc. to Verizon Communications. *See* Roeser Decl. ¶14, Ex.
 8 13 at Sections 1.1 & 1.3; *id.* ¶17, Ex. 16. Pursuant to a Stock Purchase Agreement, Verizon
 9 Communications purchased “all issued and outstanding shares of common stock” of Yahoo
 10 Holdings, Inc., assuming all the liabilities of the Transferred Assets⁷. Roeser Decl. ¶17, Ex. 16 at
 11 p. 1, 2, and 84. That Stock Purchase Agreement also incorporates a Reorganization Agreement,
 12 whereby Yahoo Holdings, Inc. acquired all Transferred Assets and assumed the liabilities⁸ related
 13 thereto:

14 Section 1.3 Assumed Liabilities. At the Closing, on the terms and subject to
 15 the conditions set forth in this Agreement, the Company shall, effective as of the Closing,
 16 assume and shall agree to satisfy, pay, perform and discharge when due all of the Liabilities of
 17 Seller other than the Retained Liabilities (collectively, the “Assumed Liabilities”). Without
 18 limiting the foregoing, “Assumed Liabilities” includes:

20
 21
 22
 23
 24 ⁷ See Section 1.1 of the Reorganization Agreement.

25 ⁸ See, e.g., *Funai Elec. Co. v. Daewoo Elecs. Corp.*, No. C-04-01830 JCS, 2008 WL
 26 8969091, at *7 (N.D. Cal. July 22, 2008) (citing *Ray v. Alad Corp.*, 19 Cal. 3d 22, 560 P.2d 3
 27 (1977) (“First, the Court looks to the law of California regarding successor liability. Under
 28 California law, a corporation that purchases the assets of another corporation does not generally
 assume the other’s liabilities unless one of the following exceptions applies: (1) ***there is an express
 or implied agreement of assumption***, (2) the transaction amounts to a consolidation or merger of
 the two corporations, (3) the purchasing corporation is a mere continuation of the seller, or (4) the
 transfer of assets to the purchaser is for the fraudulent purpose of escaping liability for the seller’s
 debts.”)).

(a) all Liabilities to the extent resulting from, related to, arising out of, imposed under or pursuant to the conduct of the Business or the Transferred Assets, whether arising from or related to any period prior to, on, or after the Closing, including Liabilities for infringement claims, service obligations and obligations under warranty and other claims to the extent relating to, arising from or incurred in connection with the conduct of the Business or the Transferred Assets:

The Reorganization Agreement also details Yahoo n/k/a Altaba's retained liabilities, which importantly **do not list the Accused Products**: (1) liabilities from the Excluded Assets [as defined Section 1.2], (2) liabilities under the Indenture and related hedge and warrant transaction, (3) actions by security holders against directors and officers, (4) employee liabilities, (5) indemnity arising out of the Excluded Assets, (6) liabilities under the Stock Purchase Agreement, and (7) liabilities related to SEC or Nasdaq reporting. *See Roeser Decl. ¶14, Ex. 13 at Section 1.4.* The express assumptions of liability [REDACTED]

Yahoo n/k/a Altaba sold its entire operating business, including all assets and liabilities for patent infringement, to Verizon Communications. *See* Gupta Decl. at ¶5; Parry Decl. at ¶5; Roeser Decl. ¶14, Ex. 13; *id.* ¶17, Ex. 16. Yahoo n/k/a Altaba does not own or control any of the assets or liabilities of the Accused Products. *See* Gupta Decl. at ¶6; Parry Decl. at ¶7. When the Accused Products became owned, operated, and [REDACTED]¹⁰ by Verizon Media, [REDACTED]

⁹ Even assuming arguendo that the liabilities for patent infringement related to the Accused Products were retained by Yahoo n/k/a Altaba (which they weren't), [REDACTED]

See *infra* at Section II(B).

See *infra* at Section II (C).

¹⁰ See Agreement at p.4

1 [REDACTED]
2 [REDACTED] See Agreement at [REDACTED]
3 [REDACTED]; Agreement at [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED] This is the result Droplets negotiated with RPX, and for which it received full
8 compensation.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 F. **Yahoo n/k/a Altaba's "Covered Third Part[y]" Status**

21 Under the terms of the Agreement between Droplets and RPX, [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED] Yahoo developed the Licensed Products and Services (Accused Products),

1 *see* Tepstein Decl. ¶5, which Droplets acknowledges, *see* Dkt. No. 387 at 3 (“Yahoo, not Oath
2 created the websites at issue and eventually sold them to Oath”). [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 **G. Droplets’ Agreement Not to Sue**

10 Droplets also agreed [REDACTED]
11 [REDACTED]
12 [REDACTED] Agreement at [REDACTED].
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] *Id.* at [REDACTED].
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 *See supra* at Section II (E).

23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED] Agreement at [REDACTED]. [REDACTED]
28

1 t [REDACTED]
2 [REDACTED]
3 [REDACTED] Agreement at [REDACTED]
4 [REDACTED], yet Droplets refuses to dismiss this lawsuit. Roeser
5 Decl. ¶22, Ex. 21 [Notice Letter from RPX to Droplets].
6

7 Finally, [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 **III. ARGUMENT**

15 A valid patent license is a complete defense to infringement liability. *See Seoul Laser*
16 *Dieboard Sys. Co. v. Computerized Cutters, Inc.*, No. 15-CV-1212-H-DHB, 2015 WL 12081336,
17 at *6 (S.D. Cal. Dec. 22, 2015) (citing *McCoy v. Mitsubishi Cutlery, Inc.*, 67 F.3d 917, 920 (Fed.
18 Cir. 1995) (“A licensee, of course, has an affirmative defense to a claim of patent infringement.”)).
19

20 Summary judgment is appropriate “if the movant shows that there is no genuine issue as to
21 any material fact and that the movant is entitled to a judgment as a matter of law.” Fed. R. Civ. P.
22 56(a). Summary judgment is appropriate when contract terms are clear and unambiguous, even if
23 the parties disagree as to their meaning. *U.S. v. King Features Entm’t, Inc.*, 843 F.2d 394, 398
24 (9th Cir. 1988). Interpretation of a contract is a matter of law, including whether the contract is
25 ambiguous. *Id.*

26 “The fundamental goal of contractual interpretation is to give effect to the mutual intention
27
28

1 of the parties.” *Powerine Oil Co., Inc. v. Superior Ct.*, 37 Cal. 4th 377, 390 (2005).¹¹ The primary
 2 evidence of the parties’ intent is the language of the agreement itself. *Integrated Glob. Concepts,
 3 Inc. v. j2 Glob., Inc.*, Civ. No. C-12-03434-RMW, 2014 WL 1230910, at *5 (N.D. Cal. Mar. 21,
 4 2014). Under California law, contract interpretation, including whether an ambiguity exists, is a
 5 question of law. *Wolf v. Superior Court*, 114 Cal. App. 4th 1343, 1351 (2004).

6
 7 Here, the Agreement is unambiguous on its face, and its terms are not susceptible to more
 8 than one interpretation. The Court can and should use the plain language of the Agreement to find
 9 that Verizon Media, the Accused Products and Yahoo n/k/a Altaba are all licensed to practice the
 10 ’745 Patent.

11 **A. Verizon Media is Licensed under the Agreement**

12 Verizon Media, [REDACTED] has a license to the ’745
 13 Patent. *See Agreement*, [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED] And this result should not come as a surprise
 17 to Droplets. The Agreement provides [REDACTED]
 18 [REDACTED] and that is exactly what happened.
 19 Verizon Communications, via Yahoo Holdings, Inc., acquired the entire operating business
 20 (including patent infringement liabilities) of Yahoo n/k/a Altaba. [REDACTED]
 21 [REDACTED] *See Agreement*
 22 at [REDACTED]. As a wholly-owned subsidiary of Verizon Communications, Verizon Media is, [REDACTED]
 23 [REDACTED] because it is under common ownership or control with Verizon
 24 Patent and Licensing and Verizon Communications. [REDACTED]
 25 [REDACTED]
 26 [REDACTED] t
 27
 28

The court in *FutureVision.com, LLC v. Cequel Commc'ns, LLC*, No. CV 13-855-GMS-MPT, 2016 WL 373790, at *8 (D. Del. Feb. 1, 2016) faced a similar license defense based on FutureVision's agreement with RPX. After analyzing the FutureVision/RPX Agreement, Judge Thyng found that an after-acquired company was an "Affiliate" as defined by RPX and the defendant was therefore licensed. *Id.* There, the defendants asserted, in part, that their sales of Pace's product were licensed due to ARRIS's (a licensed RPX Member like Verizon Patent and Licensing) acquisition of Pace, making Pace an "Affiliate" under the terms of the FutureVision/RPX Agreement. The similarities to the facts with respect to Verizon Media in this motion are startling:

FutureVision	Droplets/Verizon Media
FutureVision signs Agreement.	Droplets signs Agreement.
"Affiliate" is defined as "any and all Entities, now or in the future and for so long as the Control exists, that are Controlled, directly or indirectly by the Entity."	[REDACTED]
Pace (the owner of an accused product) was acquired by an RPX Member after the Agreement was signed.	Verizon Media (the owner of the accused products) was acquired by an RPX Member after the Agreement was signed.
Defendants contend that once an entity becomes controlled by an RPX member, e.g., through acquisition, that entity is an "Affiliate" within the meaning of the Agreement.	Verizon Media contends that once it became controlled by an RPX member, e.g., through acquisition, it became an "Affiliate" within the meaning of the Agreement.
Plaintiff argued that the acquired company would only be deemed an "Affiliate" for purposes of the period of time after the acquisition by the RPX Member.	Droplets seems to argue that Verizon Media would only be deemed an "Affiliate" for purposes of the period of time after the acquisition by the RPX Member.
The court granted defendants' licensing defense.	

1 To try to avert a similar outcome, Droplets is attempting to ignore language in the very
 2 Agreement it negotiated and agreed with RPX:
 3 [REDACTED]

4 [REDACTED] This argument is improper and should be rejected. *See* Cal. Civ. Code
 5 § 1641 (“The whole of a contract is to be taken together, so as to give effect to every part, if
 6 reasonably practicable, each clause helping to interpret the other”). As such, the Court should
 7 grant summary judgment of non-infringement in favor of Verizon Media.
 8

9 **B. The Accused Products are Licensed under the Agreement**

10 The Accused Products are owned and operated by Verizon Media, [REDACTED]
 11 [REDACTED] *See* Gupta Decl. at ¶6; Parry Decl. at ¶7; Roeser Decl., Ex. 13
 12 [Reorganization Agreement by and between Yahoo! Inc. and Yahoo Holdings, Inc.]; Ex. 15 [State
 13 of Delaware Certificate of Amendment of Certificate of Incorporation of Yahoo Holdings, Inc.];
 14 and Ex. 16 [Stock Purchase Agreement by and among Yahoo! Inc. and Verizon Communications
 15 Inc.].

16 Yahoo n/k/a Altaba sold its entire operating business, including all assets and liabilities for
 17 patent infringement, to Verizon Communications. *Id.*; *see* Gupta Decl. at ¶5; Parry Decl. at ¶5.
 18 When Verizon Media ([REDACTED]) acquired the Accused Products, those products [REDACTED]

19 [REDACTED] Indeed, the Accused Products [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]
 26 [REDACTED]
 27 [REDACTED]
 28 [REDACTED]

1 [REDACTED]
 2 [REDACTED] The Accused Products
 3 are, therefore, licensed to practice the '745 Patent.¹²
 4

To argue that the Accused Products are not licensed would allow Droplets to render
 5 meaningless certain provisions of the Agreement as shown below:¹³
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]

10 [REDACTED] This is improper and should not be allowed. *See* Cal. Civ. Code § 1641 (“The
 11 whole of a contract is to be taken together, so as to give effect to every part, if reasonably
 12 practicable, each clause helping to interpret the other”). Furthermore, any argument that is
 13 inconsistent with the plain reading of the Agreement should be rejected. “Th[e] court must be
 14 guided by the well accepted and basic principle that an interpretation that gives a reasonable
 15 meaning to all parts of the contract will be preferred to one that leaves portions of the contract
 16 meaningless.” *Fortec Constructors v. U.S.*, 760 F.2d 1288, 1292 (Fed. Cir. 1985) (citing *U.S. v.*
 17 *Johnson Controls, Inc.*, 713 F.2d 1541, 1555 (Fed. Cir. 1983)).
 18

Droplets extensively negotiated the terms of the Agreement, [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23

24 ¹² Importantly, Droplets does not assert any claims against any product owned or operated
 25 by Altaba, as all infringement claims are through June 13, 2017. Yahoo n/k/a Altaba. is a
 26 registered investment company under the Investment Company Act of 1940. In addition, as the
 developer of the Accused Products, Yahoo n/k/a Altaba is a Covered Third Party under the
 Agreement.

27 ¹³ [REDACTED]
 28 [REDACTED]

1 [REDACTED] The
 2 court should grant summary judgment that the Accused Products are licensed to practice the '745
 3 Patent.

4 **C. Yahoo n/k/a Altaba is a Covered Third Party under the Agreement**

5 In the Agreement, [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]

11 [REDACTED] Because Yahoo n/k/a Altaba developed the Licensed Products and
 12 Services, a point Droplets itself acknowledges, [REDACTED] Therefore, with respect
 13 to the Accused Products, Yahoo n/k/a Altaba is licensed to practice the '745 Patent. *See* Tepstein
 14 Decl. ¶5; [REDACTED]

15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED] That argument is
 22 unavailing. *See FutureVision.com*, 2016 WL 373790, at *8 (rejecting FutureVision's argument
 23 that Pace was intended to be unlicensed unless and until the option price stated in FutureVision's
 24 Agreement was paid). Verizon Communications' acquisition of Yahoo's operating assets was
 25 announced nearly five years after the Agreement was executed. *See* Roeser Decl. ¶23, Ex. 22
 26 [Press Release]. Droplets could not have known about the Verizon acquisition "when the []
 27 [REDACTED]
 28 [REDACTED]

1 Agreement was executed and, therefore, could not have accounted for it in its negotiations
2 concerning that agreement.” *See FutureVision.com*, 2016 WL 373790, at *8.

3 Any argument that Yahoo n/k/a Altaba is not a Covered Third Party is merely an attempt
4 to rewrite the plain language of the Agreement (as set forth below) [REDACTED]
5 [REDACTED]—namely, for the inclusion of the
6 Yahoo/Verizon acquisition—[REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] This re-write attempt is nothing more than seller’s remorse and should be
14 rejected. *See Cal. Civ. Code § 1641*. As such, the Court should grant summary judgment of non-
15 infringement in favor of Yahoo n/k/a Altaba.
16

17 **D. Droplets is Required to Dismiss the Case**

18 Droplets’ allegations against Verizon Media, the Accused Products, and Yahoo n/k/a
19 Altaba should be dismissed because, [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 In blatant disregard of its promise,
5 Droplets refuses to dismiss this case despite
6 RPX providing such notice on May 10,
7 2019. See Roeser Decl. ¶22, Ex. 21 [REDACTED]
8 [REDACTED]. Verizon
9 Media, the Accused Products and Yahoo
10 n/k/a Altaba can no longer be accused of
11 infringing the '745 Patent because they are
12 licensed under the Agreement. [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 The result of the Verizon acquisition should not be a surprise to Droplets. In fact, the
20 Agreement contemplated this exact scenario [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] [REDACTED]
24 [REDACTED]
25
26 _____
27 14 [REDACTED]
28 Agreement at [REDACTED].

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED] [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]

8 Droplets should dismiss this case voluntarily; however, it refuses to honor its promises.
 9 Because it does not, this Court should dismiss this action as a matter of law.

10 **E. Droplets' Attempt to Create a Factual Dispute Through Discovery**

11 Droplets, clearly unhappy with the plain language of the extensively negotiated Agreement,
 12 served multiple discovery requests upon Yahoo n/k/a Altaba, Verizon Media and RPX in an
 13 attempt to manufacture some sort of factual dispute to escape summary judgment of non-
 14 infringement based on the license it provided under the Agreement. However, just like its
 15 arguments with respect to the scope of the license it provided to Verizon Media, the Accused
 16 Products and Yahoo n/k/a Altaba, this attempt to avoid summary judgment flies in the face of not
 17 only the Agreement, but the findings of the Court. *See* Dkt. No. 411 (“This is an issue of contract
 18 interpretation...”).

19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]
 26 _____

27 ¹⁵ See *Digitech Image Techs. LLC v. LG Elecs., Inc.*, No. CV 15-34-SLR, 2015 WL
 28 6697263, at *5 (D. Del. Nov. 3, 2015) (interpreting the same provision in the Digitech/RPX
 License Agreement to mean that claims already in existence as of the date the license was signed
 were released).

1 [REDACTED]
2 [REDACTED] [REDACTED] Droplets' attempt to create a fact issue precluding
3 summary judgment through discovery should be rejected. "The court generally may not consider
4 extrinsic evidence of any prior agreement or contemporaneous oral agreement to vary or contradict
5 the clear and unambiguous terms of a written, integrated contract." *Wolf v. Walt Disney Pictures*
6 & Television, 162 Cal. App. 4th 1107, 1126 (2008) (citing Cal. Civ. Proc. Code § 1856(a); *Cerritos*
7 *Valley Bank v. Stirling* 81 Cal. App. 4th 1108, 1115–1116, 97 Cal. Rptr. 2d 432 (2000).

8
9 **IV. CONCLUSION**

10 There can be no genuine dispute that the Agreement provides a license for Verizon Media,
11 and a grandfathered license to the Accused Products and to Yahoo n/k/a Altaba to practice the '745
12 Patent—[REDACTED] When Yahoo n/k/a
13 Altaba sold its entire operating business to Verizon, including all past, present, and future liabilities
14 for patent infringement, Verizon Media, the Accused Products and Yahoo n/k/a Altaba [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED] For all these reasons, Verizon Media respectfully requests dismissal of the
18 pending action, with prejudice, as prescribed by the Agreement.

19
20
21
22
23
24
25
26
27
28

1 DATED: May 13, 2020
2

Respectfully submitted,

3 /s/ William A. Hector
4 William A. Hector

5 *Attorneys for Intervenor-Plaintiffs Oath, Inc.*
6 *and Oath Holdings Inc. (d/b/a Verizon*
7 *Media)*

8

9

10

11

12 **CERTIFICATE OF SERVICE**

13

14 The undersigned certifies that on this day, May 13, 2020, the following documents were served
15 electronically, via ECF, on all counsel of record registered to receive ECF notifications in this
case.

16 /s/ William A. Hector
17 William A. Hector

18

19 **CERTIFICATE OF CONFERENCE**

20 The undersigned certifies that on multiple occasions the parties have conferred regarding the
21 relief requested above. The parties have reached an impasse leaving an issue ripe for the Court's
resolution.

22 /s/ William A. Hector
23 William A. Hector